

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

STEVEN NEWLAND,

Plaintiff,

Civil Action No.: 3:18-cv-00022-KRG

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

Defendant.

CONCISE STATEMENT OF MATERIAL FACTS

AND NOW, comes Defendant, Norfolk Southern Railway Company (hereinafter “NSRC”), by and through its counsel, J. Lawson Johnston, Esquire, Scott D. Clements, Esquire, and Dickie, McCamey & Chilcote, P.C., and files the within Concise Statement of Material Facts. In support thereof, Defendant avers as follows:

1. Plaintiff initiated this Federal Employers’ Liability Act (“FELA”), 45 U.S.C. § 51, *et seq.*, action on February 1, 2018 by the filing of a Complaint against NSRC in relation to his employment as a welder. (See Complaint, attached to Defendant’s Motion for Summary Judgment as **Exhibit “A”**).

2. According to the Complaint, “[o]n or about February 15, 2015 and for some time prior thereto . . . Plaintiff suffered injuries to both shoulders[.]” (See Compl., at ¶ 8).

3. Plaintiff’s Complaint specifically alleges that he was “reaching into his work truck to get a welding mold [and] he slipped in a muddy, torn-up truck rut in the unimproved access along the rail[.]” sustaining an injury to his left shoulder. (See Compl., at ¶ 8).

4. The Complaint also alleges that, throughout his 39-plus-year career at NSRC, Plaintiff was “required to awkwardly carry, pull, and lift heavy equipment, machinery, and tools with insufficient support; was required to perform tasks and maneuver in awkward manner/positions; and was subjected to repetitive motions which caused stress and trauma.” (See Compl., at ¶¶ 9, 10).

5. On April 4, 2018, Defendant filed its Answer to Plaintiff’s Complaint, denying that Plaintiff had a viable cause of action under the FELA, demanding strict proof thereof, and setting forth its affirmative defenses. (See Answer and Affirmative Defenses to Plaintiff’s Complaint, attached to Defendant’s Motion for Summary Judgment as **Exhibit “B”**).

6. The parties have engaged in discovery, including Plaintiff’s deposition, which took place on January 16, 2019. (See Plaintiff’s Deposition Transcript, attached to Defendant’s Motion for Summary Judgment as **Exhibit “C”**).

7. In his deposition, Plaintiff testified that he believed his left shoulder was injured **prior to** the incident on or about February 15, 2015. He stated that when he slipped in the mud “that just tore it more, probably.” (See Pl. Depo. Tr., at 81: 11-23).

8. Plaintiff testified that his left shoulder started to hurt before he fell in the mud. The day he fell in the mud was “when [Plaintiff] got to the point [he] couldn’t work no more. [He] kept trying to work [through his pain]” because he “thought it would go away.” (See Pl. Depo. Tr., at 87: 23-25; 88: 1-6).

9. Plaintiff admitted that he knew he was hurting his shoulders lifting joint bars during the course of his job as early as 2014. (See Pl. Depo. Tr., at 87: 23-25; 88: 1-13).

10. With respect to his right shoulder, Plaintiff acknowledged that he complained to Dr. Stefko, his orthopedic surgeon, that it had been hurting him for about five years before 2016. (See Pl. Depo. Tr., at 223: 11-20). Specifically, Plaintiff testified as follows:

Q. So your right shoulder had been hurting five years before 2016.

A. Probably off and on, yes.

(See Pl. Depo. Tr., at 223: 18-20).

11. The facts set forth above establish that both of Plaintiff's alleged shoulder injuries occurred well before February 1, 2015.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By: /s/ J. Lawson Johnston
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CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2021, I filed the foregoing **Concise Statement of Material Facts** using the CM/ECF System, which will send notification of such filing to the following:

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